

MARY ANN SMITH
Deputy Commissioner
MIRANDA LEKANDER
Assistant Chief Counsel
CHARLES CARRIERE (State Bar No. 285837)
Counsel
Department of Business Oversight
One Sansome Street, Suite 600
San Francisco, California 94104
Telephone: (415) 972-8570
Facsimile: (415) 972-8550
Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	OAH No. 2017071029
)	
THE COMMISSIONER OF BUSINESS)	AGENCY CASE No. 21268
OVERSIGHT,)	
)	
Complainant,)	SETTLEMENT AGREEMENT
)	
v.)	
)	Hearing Date: November 2, 2017
WISPER VENTURES LEASING, LLC,)	Time: 9:00 a.m.
WISPER VENTURES, LLC, WILLIAM)	Place: 320 West Fourth Street, Suite 630
MACNAMARA, SCOTT PETERS, THOMAS)	Los Angeles, California 90013
FENCL, and CHRIS MCLAUGHLIN,)	
)	
Respondents.)	
)	

Respondents Wisper Ventures Leasing, LLC, Wisper Ventures, LLC, William MacNamara, Scott Peters, Thomas Fencl, and Chris McLaughlin (hereafter collectively, Respondents) and the Commissioner of Business Oversight (Commissioner) (collectively, the Parties) enter this Settlement Agreement with respect to the following facts:

///

///

RECITALS

A. The Department of Business Oversight (Department) has jurisdiction over individuals and entities engaged in the business of finance lending in this state pursuant to the California Finance Lenders Law (Fin. Code, § 22000 et seq.) (CFL).

B. Respondents Wisper Ventures Leasing, LLC and Wisper Ventures, LLC are Arizona companies, and the remaining respondents, William MacNamara, Scott Peters, Thomas Fencil, and Chris McLaughlin, are Arizona residents.

C. On May 12, 2017, the Department issued a Desist and Refrain Order against Respondents for violating Financial Code section 22100, subdivision (a).

D. Respondents submitted a timely hearing request, and the matter was set for hearing at the Los Angeles Office of Administrative Hearings on October 2, 2017. Pursuant to agreement of the Parties, the hearing was continued to November 20, 2017.

E. It is the intention and desire of the Parties to resolve this matter without the necessity of a hearing or other litigation.

TERMS AND CONDITIONS

1. Desist and Refrain Order. Respondents agree to the finality of the Desist and Refrain Order issued on May 12, 2017 directing Respondents to desist and refrain from engaging in the business of a finance lender in California, until licensed or otherwise being exempt. A true and correct copy of the Order is attached hereto and incorporated herein by reference as Exhibit A.

2. Waiver of Hearing Rights. Respondents acknowledge their right to a hearing under the CFL in connection with the Desist and Refrain Order attached as Exhibit A, and hereby waive such rights to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the CFL, the California Administrative Procedure Act (APA), the California Code of Civil Procedure (CCP), or any other provision of law, and by waiving such rights, consent to the Commissioner's Desist and Refrain Order becoming final. Respondents further expressly waive any requirement for the filing of an Accusation that may be afforded by Government Code section 11415.60, subdivision (b).

1 3. Acknowledgement. Wisper Ventures Leasing, LLC, acknowledges that it did not
2 timely obtain a finance lender license from the Department, or otherwise qualify for a lawful
3 exemption, as required by the CFLL. The acknowledgment of Respondents is for the purposes of
4 this and any other future proceedings that may be initiated by or brought before the Department.

5 4. Third Parties. The Parties agree that this Settlement Agreement and any
6 acknowledgements hereunder shall not be admissible or binding against Respondents in any
7 adversary proceedings between Respondents and third parties who are not signatories to this
8 Settlement Agreement. The Parties agree that this Settlement Agreement does not create any private
9 rights or remedies against Respondents, create any liability for Respondents, constitute evidence of
10 any wrongdoing by Respondents for purposes of any third-party proceeding, or limit defenses of
11 Respondents for any person or entity not a party to this Settlement Agreement and cannot be used by
12 any third party for the purposes of *res judicata* or collateral estoppel.

13 5. Future Actions by the Commissioner. The Commissioner reserves the right to bring
14 any future action(s) against Respondents or any of the managers, officers, directors, shareholders, or
15 employees of Respondents for any unknown or future violations of the CFLL. This Settlement
16 Agreement shall not serve to exculpate Respondents or any of the managers, officers, directors,
17 shareholders, or employees of Respondents from liability for any unknown or future violations of the
18 CFLL. Respondents further agree and acknowledge that nothing in this Settlement Agreement shall
19 preclude the Commissioner or her agents, officers, or employees, to the extent authorized by law,
20 from referring any evidence or information regarding this matter to any other state or federal law
21 enforcement official, or from assisting or cooperating with regard to any investigation and/or action.
22 Nothing in this Order precludes Respondents from asserting any defense in any proceeding initiated
23 by an agency other the Department of Business Oversight. Nothing in this Settlement Agreement
24 shall be interpreted as precluding the Commissioner from considering any of Respondents' past
25 conduct when determining whether to grant or deny a license to any of the Respondents.

26 6. Commissioner's Remedy for Violation. Respondents agree that if the Commissioner
27 makes a finding that Respondent(s) has violated or is violating any provision of this Settlement
28 Agreement, the Commissioner may, in her sole discretion, immediately revoke any licenses held by,

1 and/or deny any pending application(s) of Respondents, their successors and assigns, by whatever
2 names they might be known. Respondents hereby waive any notice and hearing rights to contest
3 such revocation(s) and/or denial(s) which may be afforded under the CFLL, the APA, the CCP, or
4 any other provision of law in connection therewith. Respondents further expressly waive any
5 requirement for the filing of an Accusation that may be afforded by Government Code section
6 11415.60, subdivision (b).

7 7. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it
8 has received or been advised to seek independent legal advice from its attorneys with respect to the
9 advisability of executing this Settlement Agreement.

10 8. No Other Representation. Each of the Parties represents, warrants, and agrees that in
11 executing this Settlement Agreement, it has relied solely on the statements set forth herein and the
12 advice of its own counsel. Each of the Parties further represents, warrants, and agrees that in
13 executing this Settlement Agreement, it has placed no reliance on any statement, representation, or
14 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
15 failure of any party or any other person or entity to make any statement, representation or disclosure
16 of anything whatsoever. The Parties have included this clause: (1) to preclude any claim that any
17 party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude
18 the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this
19 Settlement Agreement.

20 9. Modifications and Qualified Integration. No amendment, change or modification of
21 this Settlement Agreement shall be valid or binding to any extent unless it is in writing and signed by
22 all the parties affected by it.

23 10. Full Integration. This Settlement Agreement is the final written expression and the
24 complete and exclusive statement of all the agreements, conditions, promises, representations, and
25 covenants between the Parties with respect to the subject matter hereof, and supersedes all
26 discussions between and among the Parties, their respective representatives, and any other person or
27 entity, with respect to the subject matter covered hereby.
28

1 11. No Presumption from Drafting. In that the Parties have had the opportunity to draft,
2 review and edit the language of this Settlement Agreement, no presumption for or against any party
3 arising out of drafting all or any part of this Settlement Agreement will be applied in any action
4 relating to, connected to, or involving this Settlement Agreement. Accordingly, the Parties waive
5 the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases
6 of uncertainty, language of a contract should be interpreted most strongly against the party who
7 caused the uncertainty to exist.

8 12. Counterparts. This Settlement Agreement may be executed in any number of
9 counterparts by the Parties, and when each party has signed and delivered at least one such
10 counterpart to the other party, each counterpart shall be deemed an original and taken together shall
11 constitute one and the same Settlement Agreement. A fax signature shall be deemed the same as an
12 original signature.

13 13. Terms, Headings and Governing Law. All terms used, but not defined herein, shall
14 have the meaning assigned to them by the CFLL. The headings to the paragraphs of this Settlement
15 Agreement are inserted for convenience only and will not be deemed a part hereof or affect the
16 construction or interpretation of the provisions hereof. This Settlement Agreement shall be
17 construed and enforced in accordance with, and governed by, the laws of the State of California.

18 14. Authority for Settlement. Each party warrants and represents that such party is fully
19 entitled and duly authorized to enter and deliver this Settlement Agreement. In particular, and
20 without limiting the generality of the foregoing, each party warrants and represents that it is fully
21 entitled to enter the covenants, and undertake the obligations set forth herein.

22 15. Public Record. Respondents hereby acknowledge that this Settlement Agreement and
23 the exhibits attached hereto will be a matter of public record. Respondents further understand and
24 agree to not make any statement or representation that is inconsistent with this Settlement
25 Agreement.

26 16. Voluntary Agreement. The Parties each represent and acknowledge that he, she or it
27 is executing this Settlement Agreement completely voluntarily and without any duress or undue
28 influence of any kind from any source.

17. Effective Date. This Settlement Agreement and the attached Desist and Refrain Order shall become effective when executed by the Commissioner or her designee and transmitted by electronic mail to Respondents at aalper@frandzel.com and andre@carmanlf.com.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Settlement Agreement on the dates set forth opposite their respective signatures.

JAN LYNN OWEN
Commissioner of Business Oversight

Dated: 11/17/17

By _____
Mary Ann Smith
Deputy Commissioner

WISPER VENTURES LEASING, LLC

Dated: 11/9/17

By _____
Scott Peters
Managing Partner

WISPER VENTURES, LLC

Dated: 11/9/17

By _____
Scott Peters
Managing Partner

Dated: 11/17/17

William MacNamara, an individual

Dated: 11/9/17

Thomas Fencl, an individual

Dated: 11/9/17

Chris McLaughlin, an individual

Dated: 11/9/17

Scott Peters, an individual

**STATE OF CALIFORNIA
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF BUSINESS OVERSIGHT**

TO: William MacNamara
Scott Peters
Thomas FencI
Chris McLaughlin
Wisper Ventures, LLC
246 S. Cortez Street
Prescott, Arizona 86303

Wisper Ventures Leasing, LLC
7135 East Camelback Road, Suite F240
Scottsdale, Arizona 85251

**DESIST AND REFRAIN ORDER
(For violations of Financial Code section 22100)**

The Commissioner of Business Oversight (Commissioner) finds that:

1. At all relevant times, Wisper Ventures Leasing, LLC was an Arizona limited liability company with its last known address at 7135 East Camelback Road, Suite F240, Scottsdale, Arizona 85251. Wisper Ventures Leasing, LLC's statutory agent for service of process is André Carman (Carman), also located at 7135 East Camelback Road, Suite F240, Scottsdale, Arizona 85251.
2. Wisper Ventures, LLC is the sole member of the limited liability company, Wisper Ventures Leasing, LLC.
3. Wisper Ventures, LLC is an Arizona limited liability company with its last known address at 535 East McKellips Road, Suite 3-115, Mesa, Arizona 85203. Wisper Ventures, LLC's statutory agent for service of process is also Carman, located at the Carman Law Firm, 246 South Cortez Street, Prescott, Arizona 86303.
4. At all relevant times, William MacNamara, Scott Peters, and Thomas FencI were the sole members of Wisper Ventures, LLC.
5. At all relevant times, Chris McLaughlin was a controller of Wisper Ventures, LLC.
6. Between 2014 and 2016, Wisper Ventures Leasing, LLC provided nine commercial loans to a California company.
7. In each transaction:

- a. The loans were secured by assets in the possession of the borrower prior to Wisper Ventures Leasing, LLC providing money to the borrower.
- b. The borrower sought money to pay the ongoing costs of its business.
- c. The borrower received money, followed by the “sale” of the borrower’s property to Wisper Ventures Leasing, LLC, with a provision for repayment in the form of payments to Wisper Ventures Leasing.
- d. The borrower gave up title to certain property as security in exchange for receiving money, but retained control of its property.
- e. There was no risk of Wisper Ventures Leasing, LLC losing capital, other than the insolvency of the borrower.
- f. The transactions included agreements for title reversions and “repurchase” at the end of the payment periods described in the agreements.

8. Although Wisper Ventures Leasing, LLC labeled the transactions as sale-leaseback transactions, the transactions were loans under the California Finance Lenders Law (Fin. Code, 22000 et seq.).

By reason of the foregoing, Wisper Ventures Leasing, LLC, Wisper Ventures, LLC, William MacNamara, Scott Peters, Thomas Fencl, and Chris McLaughlin, have engaged in the business of a finance lender and/or broker without having first obtained a license from the Commissioner in violation of Financial Code section 22100.

Pursuant to Financial Code section 22712, Wisper Ventures Leasing, LLC, Wisper Ventures, William MacNamara, Scott Peters, Thomas Fencl, and Chris McLaughlin are ordered to desist and refrain from engaging in the business of a finance lender and/or broker in the State of California without first obtaining a license from the Commissioner, or otherwise being exempt.

///

///

///

///

1 This order is necessary, in the public interest, for the protection of California borrowers, and
2 is consistent with the purposes, policies, and provisions of the California Finance Lenders Law. This
3 order shall remain in full force and effect until further order of the Commissioner.
4

5 Dated: May 12, 2017
6 San Francisco, California

7 JAN LYNN OWEN
8 Commissioner of Business Oversight

9 By: _____
10 MARY ANN SMITH
11 Deputy Commissioner
12 Enforcement Division
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28